

**MOUNTAIN PARK PROJECT; ELWHA RIVER  
AMENDMENTS; AND RECREATION MANAGE-  
MENT ACT AMENDMENTS**

GOVDOC

EN 215 HRG  
103-926

**HEARING**

BEFORE THE

**SUBCOMMITTEE ON WATER AND POWER  
OF THE**

**COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE**

**ONE HUNDRED THIRD CONGRESS**

**SECOND SESSION**

**ON**

**S. 2253**

**TO MODIFY THE MOUNTAIN PARK PROJECT IN OKLAHOMA, AND FOR OTHER PURPOSES**

**S. 2262**

**TO AMEND THE ELWHA RIVER ECOSYSTEM AND FISHERIES RESTORATION ACT TO PROVIDE  
GREATER FLEXIBILITY IN THE EXPENDITURE OF FUNDS, AND FOR OTHER PURPOSES**

**S. 2266**

**TO AMEND THE RECREATION MANAGEMENT ACT OF 1992, AND FOR OTHER PURPOSES**

**JULY 8, 1994**



Printed for the use of the  
Committee on Energy and Natural Resources

**U.S. GOVERNMENT PRINTING OFFICE**

**WASHINGTON : 1995**

86-837 CC

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-046648-2

**RETAIN 5 YEARS ONLY  
ANNEX**

**DEPOSITORY  
MAR 15 1995**

**PACIFIC  
LAW LIBRARY**

**DEC 28 2000**



**MOUNTAIN PARK PROJECT; ELWHA RIVER  
AMENDMENTS; AND RECREATION MANAGE-  
MENT ACT AMENDMENTS**

GOVDOC

EN 2; S HRG

103-926

**HEARING**

BEFORE THE

**SUBCOMMITTEE ON WATER AND POWER  
OF THE**

**COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE**

**ONE HUNDRED THIRD CONGRESS**

**SECOND SESSION**

ON

**S. 2253**

TO MODIFY THE MOUNTAIN PARK PROJECT IN OKLAHOMA, AND FOR OTHER PURPOSES

**S. 2262**

TO AMEND THE ELWHA RIVER ECOSYSTEM AND FISHERIES RESTORATION ACT TO PROVIDE  
GREATER FLEXIBILITY IN THE EXPENDITURE OF FUNDS, AND FOR OTHER PURPOSES

**S. 2266**

TO AMEND THE RECREATION MANAGEMENT ACT OF 1992, AND FOR OTHER PURPOSES

JULY 8, 1994



Printed for the use of the  
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1995

86-837 CC

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-046648-2

1040-A

**RETAIN 5 YEARS ONLY  
ANNEX**

**DEPOSITORY**

**MAR 15 1995**

**PACIFIC LAW LIBRARY**

DO NOT WRITE IN THESE SPACES  
GOVERNMENT DOCUMENTS  
RECEIVED  
DEC 28 2000

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

J. BENNETT JOHNSTON, Louisiana, *Chairman*

DALE BUMPERS, Arkansas	MALCOLM WALLOP, Wyoming
WENDELL H. FORD, Kentucky	MARK O. HATFIELD, Oregon
BILL BRADLEY, New Jersey	PETE V. DOMENICI, New Mexico
JEFF BINGAMAN, New Mexico	FRANK H. MURKOWSKI, Alaska
DANIEL K. AKAKA, Hawaii	DON NICKLES, Oklahoma
RICHARD C. SHELBY, Alabama	LARRY E. CRAIG, Idaho
PAUL WELLSTONE, Minnesota	ROBERT F. BENNETT, Utah
BEN NIGHTHORSE CAMPBELL, Colorado	ARLEN SPECTER, Pennsylvania
HARLAN MATHEWS, Tennessee	TRENT LOTT, Mississippi
BYRON L. DORGAN, North Dakota	
	BENJAMIN S. COOPER, <i>Staff Director</i>
	D. MICHAEL HARVEY, <i>Chief Counsel</i>
	PATRICIA A. McDONALD, <i>Staff Director for the Minority</i>
	GARY G. ELLSWORTH, <i>Chief Counsel for the Minority</i>

---

### SUBCOMMITTEE ON WATER AND POWER

BILL BRADLEY, New Jersey, *Chairman*

WENDELL H. FORD, Kentucky	ROBERT F. BENNETT, Utah
BEN NIGHTHORSE CAMPBELL, Colorado	MARK O. HATFIELD, Oregon
BYRON L. DORGAN, North Dakota	FRANK H. MURKOWSKI, Alaska

J. BENNETT JOHNSTON and MALCOLM WALLOP are Ex Officio Members of the Subcommittee

DANA SEBREN COOPER, *Counsel*

JAMES P. BEIRNE, *Senior Counsel (Minority)*

# CONTENTS

## STATEMENTS

	Page
Archer, Thomas R., manager, Mountain Park Conservancy District, accompanied by Daniel E. McMahan, counsel .....	25
Beard, Daniel P., Commissioner, Bureau of Reclamation, Department of the Interior, accompanied by Brian Winters, National Park Service .....	6
Prepared Statement on S. 2252 .....	9
Prepared Statement on S. 2262 .....	10
Bradley, Hon. Bill, U.S. Senator from New Jersey .....	1
Gorton, Hon. Slade, U.S. Senator from Washington .....	18
Murray, Hon. Patty, U.S. Senator from Washington .....	3
Nickles, Hon. Don, U.S. Senator from Oklahoma .....	5



# **MOUNTAIN PARK PROJECT; ELWHA RIVER AMENDMENTS; AND RECREATION MANAGE- MENT ACT AMENDMENTS**

---

**WEDNESDAY, JULY 27, 1994**

**U.S. SENATE,  
SUBCOMMITTEE ON WATER AND POWER,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.***

The subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Bill Bradley, presiding.

## **OPENING STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY**

Senator BRADLEY. The subcommittee will come to order. I would like to welcome you to the Subcommittee on Water and Power's second hearing on a diverse cross-section of reclamation issues addressed in several bills pending before the subcommittee.

These bills include S. 2253, to modify the Mountain Park Project in Oklahoma and for other purposes; and S. 2262, to amend the Elwha River Ecosystem and Fisheries Restoration Act; and S. 2266, to amend the Recreation Management Act of 1992. These bills seek to amend laws that passed Congress at the end of the 102nd session in 1992. Two of the bills, S. 2253 and S. 2266, amend titles of the Reclamation Authorization and Adjustment Act of 1992.

Title 31 of Public Law 102-575, authorized by the Bureau of Reclamation to either accept a prepayment of or to reschedule capital repayment obligations of Mountain Park Conservancy District in Oklahoma under very specific conditions. Title 28 of that Act directed the Commissioner of the Bureau of Reclamation to make any regulations necessary to ensure the protection, comfort, and wellbeing of the public using Reclamation lands and to ensure the protection of its resource values.

The third bill, S. 2262, amends the Elwha River Ecosystems and Fisheries Restoration Act. Congress took a significant step with the Elwha River Act by creating a legislative resolution to a difficult and stubborn legal battle on the Olympic Peninsula in the State of Washington. A broad-based coalition supported that bill, including timber companies, fishermen, paper mills, Native Americans, environmentalists, city officials, park administrators, and economic development specialists.

I co-sponsored that bill in the last Congress. It required the Secretary to study how to fully restore the Elwha River ecosystem to



its native fish species. In his report to Congress in June, the Secretary concluded that removal of the two Elwha River hydroelectric projects is the only alternative that would achieve the goal of full restoration.

Two years have passed since enactment of these laws. During that time it became evident to those trying to carry out the provisions of the new law that changes were needed to accomplish the goals of the authorizing legislation. No repeal of the original legislation was needed, no major overhaul; just fine-tuning.

Specifically, S. 2253 amends Public Law 102-575 to allow the Secretary of the Interior to accept prepayment equal to the fair market value of the Mountain Park District's obligation. S. 2253 also authorizes the Secretary to look into reallocating project water facilities and land for environmental purposes in exchange for adjusting the project's cost in proportion to the yield being reallocated.

S. 2266 amends Public Law 102-575 by supplementing the law enforcement actions of States, their political subdivisions, and other Federal agencies with on-site Bureau of Reclamation personnel for quicker response in visitor emergencies and a more thorough protection of facilities and natural and cultural resources.

S. 2262 amends Public Law 102-495 to grant the Secretary of the Interior and the Secretary of Commerce flexibility in funding the law's provisions out of one or more agencies' budgets, including but not limited to the Park Service, the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, the Bureau of Reclamation, and the National Marine Fisheries Service.

It is time to fulfil the goals of the original authorization legislation. It is time to relieve the uncertainty for the cities of Altus, Snyder, and Frederick in Oklahoma, who because of unrealized growth do not know whether they can afford to meet their Federal repayment obligations for the municipal water supply. It is time to provide the Bureau of Reclamation with the law enforcement authority to fulfil the Secretary's responsibility for protecting facilities and natural and cultural resources of the Bureau lands and many visitors who use reclamation recreation resources.

It is time to restore one of the Nation's most scenic and spectacular rivers, the Elwha, located in the Olympic National Park. It is time to begin rebuilding populations of king salmon, steelhead trout, and other species imperiled by dams built nearly a century ago. It is time to provide stability for local paper mill workers at the region's major employer, already hard-hit by cutbacks in the forest products and commercial fishing industries.

Finally, it is time to begin this hearing, and I look forward to the testimony of all the witnesses today. I welcome in particular the distinguished Senator from Washington, Senator Murray, who will speak to us concerning the Elwha matter. I welcome you to the subcommittee and salute you for your leadership generally on environmental issues and other things, and am anxious to hear what you have to say today.

[A prepared statement of Senator Boren follows:]



PREPARED STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Mr. Chairman, I appreciate the opportunity to present testimony before the subcommittee on behalf of the Mountain Park Conservancy District which includes the Oklahoma communities of Altus, Frederick and Snyder.

Senator Nickles and I have introduced legislation that would allow the District to restructure its debt with the federal government and the Bureau of Reclamation. This legislation is critical to the future of not only the Conservancy District itself, but to the communities that comprise the district. It is with this dire situation in mind that I want to offer my deepest appreciation to Senator Bradley, the subcommittee chairman, for his commitment to craft a solution to this problem.

The Mountain Park Conservancy District was formed in the early 1970's to take care of the water needs of the semi-arid southwest region of Oklahoma. Estimates of population growth projected a need for a reservoir for water supply purposes. The district worked with the Bureau of Reclamation and negotiations resulted in the construction of the Tom Steed reservoir.

Unfortunately, the forecasted population growth did not materialize leaving the district with an abundance of water but without the population needed to pay for the project. Currently, the district has the highest water rates in the entire state of Oklahoma.

Senator Nickles and I both had worked on legislation that was intended to restructure the District's debt. That bill was implemented into law during the 102nd Congress. Unfortunately, the result of the intended corrective legislation did not provide relief to the district as we had hoped.

Today we are faced with a situation where the cities of the Mountain Park district are faced with a tough choice. Either default on the loan to the federal government or face bankruptcy. Neither of these choices will benefit either the community or the federal treasury.

Both the House and Senate have recognized the need to provide relief to the District to protect the financial investment made by the Bureau of Reclamation. Congressional action is needed this year to modify the original repayment legislation and prevent a default by the district.

Once again I would like to thank the subcommittee chairman for his willingness to find a solution that both protects the interests of the federal government and provides relief to these communities.

**STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Thank you, Mr. Chairman. I want to thank you for holding this very important hearing today on legislation that is extremely important to resolving a longstanding natural resource dispute in my State. And I also want to acknowledge your leadership, Mr. Chairman, on this issue generally. You were a champion when Congress last acted on the Elwha salmon restoration issue and you know how important it is to the State, to my own State, and to this Nation, and I appreciate your co-sponsorship of this bill.

The bill before the committee today, S. 2262, will enable a settlement to go forward that will protect jobs on the Olympic Peninsula, preserve tribal treaty rights, and restore the once magnificent salmon runs to the Elwha River.

Congress passed the Elwha River Ecosystem and Fisheries Restoration Act of 1992 in an effort to end a protracted legal struggle over the relicensing of two small power dams on the Elwha River in and adjacent to Olympic National Park. Essentially, this Act was a settlement between two paper companies, a tribe, public interest groups, and the Federal Government.

The struggle arose over one obvious fact: These two dams, installed very early this century before enactment of the Federal Power Act, cut off salmon runs of tremendous productivity and cultural value from their spawning grounds in the upper reaches of the Elwha watershed.

Following the action by Congress, the Park Service, working with other Federal agencies and the Lower Elwha Sklallam Tribe, was required to complete a study on the procedural options for restoring salmon runs to the river.

In May of this year the Park Service completed that feasibility study on salmon restoration. It concluded it would be feasible to restore the salmon runs by removing the dams. Such a course of action would enable the Federal Government, the tribe, and certain private interests to avoid lengthy, contentious, expensive litigation. Both the House and Senate Appropriations Committees have provided \$3.5 million for fiscal year 1995 for the Park Service to conduct an environmental impact statement on the acquisition and removal of the dams in order to restore the Elwha River salmon.

Assuming the EIS is concluded successfully, proceeding with dam removal in future years would force the Federal Government to incur significant costs. However, I believe the costs of such action would be less than exposing the Government to a costly court-imposed settlement. I introduced S. 2262 to repair a flaw in the original legislation that would preclude the Secretary of the Interior from using the financial resources of all agencies under his jurisdiction to address this issue.

Specifically, this bill would strike language in the current law that requires the Secretary to limit his use of funds for Elwha restoration to the agencies under the jurisdiction of the Assistant Secretary for Fish, Wildlife, and Parks. There are other agencies within the Department, such as the Bureau of Reclamation, that have significant expertise in engineering and public works.

I believe it is appropriate for the Secretary to have the ability to use this expertise to address this issue. Fundamentally, the Secretary would be upholding Native American treaty rights the Department is legally responsible for defending.

Mr. Chairman, I want to highlight an important consideration this bill seeks to address. There is a pulp mill in the town of Port Angeles that draws electric power from the dams in question. Current law provides access to alternate energy sources if the dams are removed.

If the EIS is affirmative and the Secretary is unable to see this project through, the pulp mills' access to energy would be called into question. If action is forced by the courts to remove the dams, which is a very real possibility, the high-wage union jobs at this mill would be threatened. I do not believe we should subject the community to that kind of risk.

Therefore, to protect these jobs, to uphold Native American treaty rights, and to restore a cultural resource of immense value, it is very important for the U.S. Senate to ensure the Department of the Interior has the resources necessary to implement the Elwha settlement.

Finally, I will point out that this bill is consistent with administration policy. The President's fiscal year 1995 budget requested \$400,000 for the Bureau of Reclamation to assist with the EIS. It also suggested a change to current law, as proposed in my bill.

I urge this committee to act swiftly on this legislation. I stand ready to work with you in whatever capacity to ensure this settle-

ment is implemented. And again I thank you, Mr. Chairman, for your leadership on this very important issue.

Senator BRADLEY. Thank you very much, Senator Murray, for your testimony. I think that it is very clear and right on target. I fully support it and I hope that we will be able to move the bill very quickly and with broad support. I think the evidence is out there and I think you presented it very effectively.

Senator MURRAY. Thank you, Mr. Chairman.

Senator BRADLEY. I have no questions.

Senator Nickles is here. I know that he has a deep interest in the Oklahoma issue, the Mountain Park Conservancy District, and I recognize him now to make his statement.

### STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much. I want to thank you and your staff for your willingness, one, to hold this hearing today, and also for your willingness to assist myself and Senator Boren and others that have an interest in resolving a very serious problem. I have talked to you about this over the last two or three years and I am really thankful that I think we will be able to get some legislation through the committee and through the Congress.

Mr. Chairman, I would like to first introduce to the subcommittee Mr. Randy Archer. Mr. Archer is the manager of the Mountain Park Master Conservancy District. He will testify on S. 2253, and he is accompanied by Mr. Dan McMahan, the district counsel, who will also respond to any questions presented by the committee.

Mr. Chairman, S. 2253 allows Mountain Park Master Conservancy District to repay or refinance its obligations to the Bureau of Reclamation for construction costs associated with the Mountain Park Project. This prepayment would be equal to the fair market value of the district's debt and is necessary to prevent a possible default by the district on that obligation.

Further, S. 2253 would authorize the Secretary of the Interior to reallocate a portion of the project's water supply for environmental purposes to further reduce the district's water supply repayment obligation.

The Mountain Park Master Conservancy District was formed by the Oklahoma communities of Altus, Frederick, and Snyder in the early 1970's. The district contracted with the Bureau of Reclamation for the construction of the Mountain Park project in response to projections that the local population would increase significantly in the future and additional water supply would be needed.

Unfortunately, those projections did not materialize. Unfortunately, the cost ballooned. Unless action is taken soon, Mr. Chairman, one of the municipalities obligated to the district may default on its loan repayment to the district in September of this year. Such a default would in turn cause the district to default on its obligation to the Bureau.

I skipped the figures. The project's cost ballooned from \$13.4 million estimate in 1964 to the cost allocation of \$35.5 million in 1993. Since 1992, the district has worked with the Oklahoma Congressional delegation to obtain relief from the financial burden caused



by its obligation to repay the water supply costs associated with the project.

The district has requested that they be allowed to purchase or repay the obligation by making a one-time payment to the United States of the fair market value of such repayment obligation as of the date of such prepayment. Such transactions have occurred in the past with Bureau projects and those of other Federal agencies.

Mr. Chairman, I have additional information dealing with the history of this, the legislation that we worked on in 1992. We made a mistake in 1992. We placed more stringent requirements in 1992 than actually are required at other projects. This legislation would remedy that and would allow the Secretary to use actual fair market value.

Mr. Chairman, I want to thank you for your willingness to cooperate with Senator Boren and myself, and hopefully we will be able to pass this legislation and avoid a financial catastrophe and help the Government get the maximum amount of money as possible, as soon as possible. So I thank you for your cooperation.

Senator BRADLEY. Thank you very much, Senator.

As I have told Senator Nickles on a number of occasions, I think we have found the magic combination here. I am looking forward to getting this bill passed and moving ahead. I am anxious to hear what the Bureau has to say.

Senator NICKLES. Looking forward to getting me off your back, is that what you are saying?

Senator BRADLEY. No, no. You have been tenacious, that is for sure. You have been very tenacious, but in a very proper way.

Let me at this time call Dan Beard, Commissioner of the Bureau of Reclamation, as our first witness. Well, Commissioner, welcome to the subcommittee. It is always a pleasure to see you. I salute your tenure and I look forward to hearing from you on these issues and look forward to working with you.

I think you are doing a great job. I am pleased you are where you are. I wish they would give you a raise.

[Laughter.]

**STATEMENT OF DANIEL P. BEARD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY BRIAN WINTERS, NATIONAL PARK SERVICE**

Mr. BEARD. No, you do not. For me to get one you have got to get one, and I am not sure you want to go through that.

Senator BRADLEY. Well, if it was automatic I would not mind giving you a raise.

Mr. BEARD. With your permission, Mr. Chairman, I would like to submit the two statements I have for the record and address each of the three bills in numerical order. I think that might be the easiest way to proceed, if it is okay with you.

Senator BRADLEY. That is fine.

Mr. BEARD. With your permission, I would like to summarize the statements. The first bill is S. 2253, which the administration supports. The Mountain Park project, located, as Senator Nickles said, in southeastern Oklahoma, provides 16,000 acre-feet of supplemental municipal and industrial water to three cities in the area.

The Mountain Park Conservancy District executed a master repayment contract with the United States in 1971. A problem did develop because of increased costs for the project as well as, I would expect, rosy estimates as to their ability to pay. As a result, legislation to address these financial concerns was passed in 1992, as Title 31 of H.R. 102-575. This pending legislation would repeal the section 3101 of the 1992 legislation and allow for prepayment under different conditions.

The prepayment provisions of this pending legislation are in accordance with the appropriate criteria contained in OMB Circular A-129 and we believe this legislation will enable us to develop a prepayment program which will preserve the financial integrity of the district and at the same time keep the United States financially whole.

The proposed legislation also would authorize environmental quality activities as a project purpose and permit reallocation of water for those purposes. While the reallocation to non-reimbursable environmental quality purposes will result in less repayment of project construction costs by the district, the administration does support this approach, in this instance, because the bill would provide a tangible environmental benefit and because of the potential that the city of Frederick may actually default on the loan.

As a result of preliminary discussions with the district, Reclamation officials think that 2,000 acre-feet of water will be reallocated for environmental purposes. This will reduce the repayment obligation of the city from approximately \$11.8 million to around \$7 million. The pay-go implications of the lost annual repayments associated with this reduced obligation would have to be addressed if the legislation is enacted.

We have a minor recommendation for a change in section 7(d)(1) of the bill and that is presented in my testimony.

Overall, we believe this bill as amended would allow us to reach an equitable resolution to the financial issues facing the city of Frederick and provide an opportunity to enhance the environment at the same time.

With respect to S. 2262, the Elwha legislation, I am again pleased to testify in support of that legislation. The Elwha River Ecosystem and Fisheries Restoration Act was enacted in 1992 with the goal of providing for the full restoration of the Elwha River ecosystem and the native anadromous fishery involved. That legislation represented a legislative solution to a very difficult situation.

The Act authorized the Secretary to acquire the dams and remove them if he determined that the removal was necessary to meet the goal of full restoration of the river system. The Secretary was directed in that legislation to develop a report documenting his conclusions and provide it to the Congress. He was also directed to include in that report information on dam retention alternatives that would provide less than full restoration benefits.

Secretary Babbitt transmitted that report to the Congress on June 22, 1994, and in that report the Secretary determined that removal of both the Elwha and Glines Canyon Dams is the only alternative that would achieve the goal of full restoration of the Elwha River ecosystem and native anadromous fisheries and the

protection of critical resources and wildlife habitat both in and around the Olympic National Park.

In addition to promoting the issues already outlined, this determination provides for tribal fisheries and is consistent with Federal trust responsibilities of the affected Indian tribes.

The Secretary has determined that removal of these structures is feasible. This determination was only the first step of the restoration effort. Now the hard part begins, which brings us to the need for S. 2262. This bill would provide both the Secretary of the Interior and the Secretary of Commerce as cabinet officials with the budgeting and management flexibility needed to utilize agencies under their jurisdiction in the most effective manner for the restoration effort.

Currently the legislation authorizes "to be appropriated to the Secretary of the Interior for expenditure through the Assistant Secretary for Fish, Wildlife, and Parks and to the Secretary of Commerce for expenditure through the National Marine Fisheries Service such sums as may be necessary to carry out the purposes of this act."

It is the administration's position that the authority should be extended to the Secretaries for delegation to the appropriate bureaus within their individual Departments. Within the Department of the Interior, for example, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, the U.S. Geological Survey, the National Biological Survey, and the National Park Service have all had roles in the report and the discussions that have taken place on this project.

In addition to those agencies, other agencies of the Federal Government, such as the National Marine Fisheries Service, EPA, and the Corps of Engineers have also been involved.

Therefore, the administration supports the enactment of S. 2262. In fact, a legislative request to remove this constraint was included in the administration's fiscal year 1995 budget request to the Congress for the Bureau of Reclamation. The Department has made the determination that Reclamation is the agency best suited to carry out the removal of these two structures and that this project fits well within our new mission.

The Fish and Wildlife Service, the National Park Service, and the Bureau of Indian Affairs will all benefit greatly from this legislation. These agencies, along with Reclamation, will provide leadership for fisheries and ecosystem restoration efforts and the protection of tribal fisheries.

The removal of these structures is important to the protection of a major national park, the restoration of the Elwha River ecosystem, and for fisheries protection and management in the Pacific Northwest. We appreciate the leadership of Senator Murray and the chairman of the subcommittee in the effort to resolve this matter.

With respect to S. 2266, unfortunately I do not have a cleared statement at this point. We have had discussions within the administration about our position, but we were not able to put together a statement which could be cleared by all the agencies involved within the time available.



I am, however, prepared today to answer questions on the subject matter of the bill and the reasons why the bill is important. I would request that the subcommittee not move the bill until the administration has prepared a report on S. 2266, which will be submitted to the committee within 30 days.

And that concludes my testimony, Mr. Chairman. I would be happy to answer any questions.

[The prepared statements of Mr. Beard on S. 2253 and S. 2262 follow:]

PREPARED STATEMENT OF DANIEL P. BEARD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 2253

Mr. Chairman, my name is Daniel P. Beard, and I am the Commissioner of the Bureau of Reclamation, an agency of the Department of the Interior. I am pleased to have the opportunity to appear before this Subcommittee to testify on S. 2253, a bill to modify the Mountain Park Project in Oklahoma, and for other purposes.

The Administration supports S. 2253. The bill would authorize adding environmental quality as a project purpose, reallocate a portion of project costs to environmental quality activities, and authorize acceptance by the United States of a prepayment from the Mountain Park Master Conservancy District (District) for the reimbursable costs of all or a portion of its municipal and industrial (M&I) water supply. The bill would also rescind Section 3101 of Title XXXI of Public Law 102-575, relating to prepayment of the Mountain Park Master Conservancy District's repayment obligation to the United States.

The Mountain Park Project, located in southwestern Oklahoma, provides 16,100 acre-feet of supplemental M&I water to the cities of Altos, Frederick, and Snyder. The District executed a master contract with the United States in 1971 for construction, operation and maintenance of the Mountain Park Project and for repayment of reimbursable construction costs for the M&I water supply, recreation and fish and wildlife. Each of the cities participated in the project to secure dependable water supplies to meet expected population growth through the year 2000 and thereafter.

Reimbursable M&I water supply construction costs of approximately \$39.6 million are scheduled to be repaid by the District over a 50-year period which began in 1980. The District has subcontracts with each of the cities to furnish M&I water and for the repayment of each city's share of the reimbursable construction costs. The city of Frederick (City), under its subcontract with the District, is scheduled to repay its share of approximately \$11.8 million. The city did not make its first payment until 1990 because it was granted a 10-year deferment of payments through 1989 under the 1958 Water Supply Act.

As originally contemplated, each of the three cities' populations and corresponding M&I water demands were projected to increase during the 50-year repayment period so they could meet escalating annual payments. However, the expected growth failed to materialize. In fact, each of the cities experienced a population decrease between 1980 and 1990.

We have been advised by the city of Frederick that it soon may be unable to meet its repayment obligation as its annual repayment costs approach \$1 million in the year 2005. Default by the city of Frederick could adversely affect the District's ability to make its contractual payments to the United States.

Section 3101 of Title XXXI of Public Law 102-575, enacted on October 30, 1992, authorized the Secretary of the Interior to either accept prepayment of the city's share of the District's reimbursable construction costs or to reschedule the District's payments consistent with its ability to pay. This title, however, did not meet the prepayment criteria contained in Office of Management and Budget Circular A-129 and, accordingly, did not provide the basis for an affordable prepayment of the city's reimbursable obligation.

The pending legislation, S. 2253, would repeal Section 3101 of Title XXXI of Public Law 102-575, which has not resolved the financial repayment problems of the Mountain Park Project.

The prepayment provisions of the pending legislation are in accordance with the appropriate criteria contained in Office of Management and Budget Circular A-129. We believe this legislation will enable us to develop a prepayment program which will preserve the financial integrity of the District and, at the same time, keep the United States financially whole.

The proposed legislation also authorizes environmental quality activities as a project purpose and permits reallocation of water and the use of project facilities and lands for environmental quality purposes. It further permits reimbursable construction costs associated with these resources to be reallocated to nonreimbursable environmental quality purposes. This would make it possible to relieve the District and the cities of a portion of their financial obligation while, at the same time, benefiting natural environmental resources in the area.

While the reallocation to nonreimbursable environmental quality purposes will result in less repayment of project construction costs by the District, the Administration supports that approach in this instance because the bill will provide tangible environmental benefits, and because of the potential that the city of Frederick may default. As I stated earlier, default by the city could adversely affect the District's ability to make its contractual payments to the United States. Although the legislation would allow the Secretary of the Interior discretion in determining appropriate environmental quality purposes, the initial considerations have included maintenance of instream flows and development of wetlands habitat. These purposes are consistent with the Secretary's current environmental goals and water management objectives.

As a result of preliminary discussions with the District, Reclamation officials think that 2,000 acre-feet of water will be reallocated to environmental purposes. This would reduce the repayment obligation of the city of Frederick from approximately \$11.8 million to around \$7 million. The PAYGO implications of the lost annual repayments associated with this reduced obligation would have to be addressed if the legislation is enacted.

We recommend that Section 7(d)(1) of the bill be modified to read, "The Secretary of the Treasury shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget. In determining the prepayment, the Secretary of the Interior shall consider the price of the District's obligation if it were sold on the open market to a third party."

This change would make the bill consistent with current policy on prepayment, but allow the Secretary of the Interior sufficient flexibility to account for local circumstances.

We believe the bill as amended will allow us to reach an equitable resolution of the burdensome financial issues facing the city of Frederick and provide an opportunity to enhance environmental resources.

Mr. Chairman, this concludes my testimony and I would be pleased to answer any questions Members may have.

---

PREPARED STATEMENT OF DANIEL P. BEARD, COMMISSIONER, BUREAU OF  
RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 2262

THE GOAL IS FULL RESTORATION OF THE ELWHA RIVER ECOSYSTEM

Mr. Chairman, my name is Daniel P. Beard, and I am the Commissioner of the Bureau of Reclamation, an agency of the Department of the Interior. I appreciate the opportunity to appear before the Subcommittee today in strong support of S. 2262, a bill to amend the Elwha River Ecosystem and Fisheries Restoration Act to provide greater flexibility in the expenditure of funds, and for other purposes.

The Elwha River Ecosystem and Fisheries Restoration Act (P.L. 102-495) was enacted on October 24, 1992. The goal of the Act is the "full restoration of the Elwha River ecosystem and native anadromous fisheries" (Section 3(c)).

Since 1911, the Elwha and Glines Canyon Dams on the Elwha River have blocked anadromous fish passage to more than 70 miles of the River and its tributaries, limiting anadromous salmon and trout production to the lower 4.9 miles of the river below Elwha Dam. As a result, all 10 native Elwha River anadromous fish runs (i.e. spring and summer/fall chinook, coho, pink, chum, and sockeye salmon, winter and summer runs of steelhead, sea-run cutthroat trout, and native char) have been severely diminished and the ecosystem disrupted, especially within a significant portion of the Olympic National Park.

The Elwha Dam was constructed from 1910 to 1913 without fish passage facilities, and does not have a Federal license to operate. The Glines Canyon Dam was constructed from 1925 to 1927, was licensed by the Federal Power Commission (precursor to the Federal Energy Regulatory Commission, or FERC) for a period of 50 years in 1926, and has received annual licenses since 1976.

## THE FERC LICENSING PROCESS BECOMES CONTENTIOUS

The contemporary Federal licensing process began when the Crown Zellerbach Corporation (previous owner) submitted license applications to the Federal Power Commission for the Elwha Project in 1968 and the Glines Canyon Project in 1973.

During the 1980's, the FERC licensing process for both projects became extremely contentious and drawn out, due primarily to the national policy implications of licensing a project within a National Park. The owner of the dams was also unable to design fish and wildlife mitigation measures capable of meeting Federal, State, and Indian Tribe resource goals. There were also legal challenges to the licensing by conservation groups.

## P.L. 102-495 ENACTED AS A LEGISLATIVE SOLUTION

P.L. 102-495 represented a legislative solution to this difficult situation. Among other things, it protects 300 jobs at the Diashowa America Mill currently receiving its electricity from the two dams, contributes numerous jobs throughout the region as a result of restoration activities and increased commercial and recreational fishing and tourism, supports economic development for the Lower Elwha S'Klallam Tribe, and restores a national park ecosystem.

The Act authorized the Secretary of the Interior to acquire the dams and remove them if he determined that their removal was necessary to meet the goal of full restoration. The Secretary developed a report documenting his conclusion and provided it to the Congress. Additionally, the Secretary was directed to include in the report information on dam retention alternatives that would provide less than full restoration. Secretary Babbitt transmitted *The Elwha Report* to the Congress on June 22, 1994.

The Secretary determined that removal of both the Elwha and Glines Canyon Dams is the only alternative that would achieve the goal of full restoration of the Elwha River ecosystem and native anadromous fisheries and protect critical resources, wildlife, and habitats in and around Olympic National Park. In addition to promoting the issues already outlined, this determination promotes tribal fisheries and is consistent with the Federal trust responsibility of affected Indian tribes. The Secretary has determined that removal of the dams is feasible.

## BUDGETING FLEXIBILITY NEEDED FOR RESTORATION EFFORT

This determination was only the first step of the restoration effort. Now the hard part begins, which brings us to the need for S. 2262. This bill would provide both the Secretary of the Interior and the Secretary of Commerce, as Cabinet officials, with the budgeting flexibility needed to utilize agencies under their jurisdiction in the most effective manner for this restoration effort.

Currently P.L. 102-495 authorizes "to be appropriated to the Secretary of the Interior for expenditure through the Assistant Secretary for Fish, Wildlife, and Parks and to the Secretary of Commerce for expenditure through the National Marine Fisheries Service such sums as may be necessary to carry out the purposes of this Act. . . ." It is the Administration's position that this authority should be extended to the Secretaries for delegation to the appropriate bureau. Within the Department of the Interior, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the National Park Service all have important roles in this important project.

## ADMINISTRATION SUPPORTS ENACTMENT OF S. 2262

Therefore, the Administration supports enactment of S. 2262. In fact, a legislative request to remove this constraint from the Secretary of the Interior was included in the Administration's Fiscal Year 1995 request to the Congress for the Bureau of Reclamation. The Department of the Interior has made the determination that Reclamation is the agency best suited to carry out the removal of these two dams, and that this project fits in well with Reclamation's new mission as a water resources management agency. The Fish and Wildlife Service, the National Park Service and the Bureau of Indian Affairs will all benefit greatly from this legislation. These agencies, along with the Bureau of Reclamation, will provide leadership for fisheries and ecosystem restoration efforts and for the protection of tribal fisheries. The removal of these dams is important to the protection of a major National Park, the restoration of the Elwha River Ecosystem, and for fisheries protection and management in the Pacific Northwest.

We appreciate the leadership of Senator Murray and Chairman Bradley in the effort to resolve this constraint on the Secretary of the Interior and the Secretary of Commerce.



This concludes my statement, Mr. Chairman. I will be happy to respond to any questions Members may have.

Senator BRADLEY. Thank you very much, Mr. Beard, for your testimony.

Let me just ask you a couple questions about each of these bills. First, on the Mountain Park project, what is the current policy of the Department of the Interior on prepayment of Federal payment obligations?

Mr. BEARD. Well, the current policy is that any prepayment or asset divestiture, if you will, ought to be consistent with OMB Circular A-129. We believe that this legislation is consistent with the process laid out in that circular by which we make the interest calculations and the value calculations. Since the legislation, as currently written, does meet the requirements of that circular, we support its enactment.

Senator BRADLEY. Under the terms of the bill, the Federal Government will accept prepayment of the municipal share of the Mountain Park Conservancy District's capital payment debt. The district's obligation will be reduced further by reallocating a portion of those costs to non-reimbursable environmental quality purposes. This reduction in the annual repayment will probably be scored as a pay as you go increase in the Federal budget deficit.

How can this pay-go problem be eliminated, alleviated?

Mr. BEARD. I guess I would defer to the experts on the Budget Committee and at OMB and CBO to figure out how we get around this problem. I do not know the manner in which you will have to get around the budget resolution that was adopted by the committee.

I know that it is going to be a problem and I suppose the budget experts will have to figure out how we address this one.

Senator BRADLEY. Do you expect that the cities—Altus, Snyder, and Frederick—will take advantage of an opportunity to prepay their portions of the Mountain Park reimbursable construction costs?

Mr. BEARD. I am not aware of any requests from any entity other than the city of Frederick to take advantage of it, but I think as a general matter we have no objection to them doing that. The key for this legislation is to make sure that the Federal taxpayers are held harmless. We must receive a fair value for the benefits that have been provided, and not relieve anyone unduly of any requirement that was imposed upon them.

And the OMB circular provides a procedure for doing that, and in my discussions with the district it seems they are fully aware of the negotiations they are going into.

Senator BRADLEY. Do you see this as a model for other Federal reclamation projects that want to prepay?

Mr. BEARD. Well, I think every time we do this it is a precedent. We thought we had this problem solved in 1992 when we enacted the procedures outlined in the Mountain Park legislation at that time. Obviously it did not work out. So I think we are slowly but surely getting there.

Senator BRADLEY. In terms of the Elwha bill, could you briefly describe the options for full restoration that were evaluated in the Elwha report?

Mr. BEARD. Well, I would like to have Brian Winters, who is with the National Park Service and accompanying me here as the Elwha project coordinator. The report investigates the alternatives that are available to the Secretary to meet the goals laid out for the Secretary by the act.

After considerable work by many Federal agencies, the conclusion was reached that taking down the structures was the only way to meet the objective of full restoration or is the most cost-effective way to meet that objective. We are now proceeding to do the environmental impact statement to figure out exactly how that will be done.

Brian, you may want to supplement the answer.

Mr. WINTERS. Sure. In terms of the alternatives we looked at, we looked at all conventional and some experimental fish passage measures in order to meet the goal of full restoration. That included fish ladders, as well as trap and haul to move the fish upstream. It included channels around the reservoirs. It included conventional screens and what we call experimental Eiker screens.

None of the measures, either alone or in combination, resulted in full restoration.

Senator BRADLEY. Does the Department therefore think that this legislation is necessary?

Mr. BEARD. This legislation? Absolutely. The main thing this legislation gives the Secretary is the flexibility to be able to decide how to handle the funding problem. It does not increase the authorization itself.

The legislation as it is currently written provides for a rather unique procedure in that the money is authorized to be appropriated to the Secretary, but it must be obligated through one Assistant Secretary. The Secretary has determined that he would prefer to have the flexibility to make the decision as to which agency and which Assistant Secretary spends the money, and his feeling is that this would provide him and the Secretary of Commerce the flexibility to make these determinations on their own.

Senator BRADLEY. As it is now, the money has to come out of the Park Service? Is that the Assistant Secretary for Fish and Wildlife?

Mr. BEARD. No. I am not quite sure why the provision is in there, but the legislation provides that it must be obligated by the Assistant Secretary.

Senator BRADLEY. I see.

Mr. BEARD. So he is the official that must sign the proper documents for expenditure of the funds.

Senator BRADLEY. Right, instead of the Secretary.

Mr. BEARD. Instead of the Secretary or the normal procedure, which is through agencies, agency budget offices.

Senator BRADLEY. It would be the Bureau in this case.

Mr. BEARD. The Bureau or the Park Service.

Senator BRADLEY. Or Fish and Wildlife.

Mr. BEARD. I think there are four agencies that have funds for Elwha in the fiscal 1995 budget request: Park Service, Fish and Wildlife, BIA, and Bureau of Reclamation.

Senator BRADLEY. I see. Okay, thank you very much.

Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

Let us talk a little more about the funding. You have heard, I am sure, the litany that we get from our ranking member, Mr. Wallop, about constantly adding responsibilities to the parks department or Park Service and not giving them the money to do it. And we have seen deterioration in many places of the service provided to park visitors.

Do I understand correctly this is \$200 million we are talking about to remove these dams?

Mr. BEARD. The options range from \$150 million to \$300 million, depending on how you approach the resolution of the problem.

Senator BENNETT. Okay, so I am in the ballpark at \$200 million.

Mr. BEARD. Yes.

Senator BENNETT. At the low end of where it probably is going to come out.

What is the impact on the Interior Department budget of \$200 million for this in terms of priorities? If you had \$200 million extra, is this where you would put it if you were the Secretary? I know this is a very open-ended kind of question.

Mr. BEARD. If I were the Secretary?

Senator BENNETT. Well, I understand your interest.

Mr. BEARD. A lot of people just had a heart attack, including me.

Senator CRAIG. And me.

[Laughter.]

Mr. BEARD. I think the fair answer, Senator Bennett, is that Secretary Babbitt has already made that decision. Secretary Babbitt has determined this is a priority for him. He has visited the site and he has made it very apparent that this is a high priority for him, and he intends to fund it.

So whether the money comes out of the Park Service budget, the Fish and Wildlife Service budget, or the Bureau of Reclamation budget is not going to make any difference. It still comes out of the same Department and the same totals in the budget and the same totals within the administration. So the Secretary has made it eminently clear to everybody in the executive office in the Department that this is a high priority and that he will fund it.

Senator BENNETT. Okay. So he has determined that it is a higher priority than many of the other needs that we have in the Park Service?

Mr. BEARD. Sure.

Senator BENNETT. What is the economic impact, if any, on the community?

Mr. BEARD. Of?

Senator BENNETT. The surrounding area. Is there no impact, economic use of these dams?

Mr. BEARD. Yes. Currently the power from these dams is used in Port Angeles and other locations, and I think you have received testimony from Senator Murray and a statement for the record from the current owners of the facility of their support for the legislation.

The 1992 legislation did make provisions for ensuring that the power that would be foregone if the facilities were taken down would be made up through the Bonneville grid. That language was satisfactory at the time to all the parties involved and that process is now going forward. But I have interrupted you.



Senator BENNETT. No, go ahead.

Mr. BEARD. I was just going to say the original legislation tried to address all the potential down sides from removal of the structures, in other words the power and water supply problems. And there is of course the added benefit that you are restoring the fishery, which has benefit to the tribe involved. We have protected the mill, provided for a long-term power supply, and we are providing jobs through the construction effort or decommissioning effort.

Senator BENNETT. I am less concerned about the jobs because they are a one-shot kind of thing, than I am about the long-term economic impact and what it is really going to cost us overall as a Nation to take these dams out.

I understand they are privately constructed and privately owned. Do I understand correctly that the current owners are delighted to sell them to the Federal Government?

Mr. BEARD. I am not sure that "delighted" is the right phrase.

Senator BENNETT. "Willing" is better?

Mr. BEARD. You would have to ask them as to whether or not the price is fair. But I think they find themselves on the horns of a very difficult dilemma. They cannot get these facilities relicensed on a long-term basis. They have been in the FERC process for a long time, and the compromise solution that was reached was to agree to purchase the facilities, buy out their rights, I suppose is the best way to put it, at a specified price in the legislation. That was the decision the Congress made in 1992.

Senator BENNETT. I am glad to have you clarify that, because from your earlier statement I got the impression that everybody involved thought this was a wonderful deal, including the owners. And it comes across that they think it is a wonderful deal given the alternative, which is that they get shut down.

Mr. BEARD. Well, I was looking for their testimony here, which I think they are going to submit for the record. But they make it very clear that they support this legislation just as they supported the original legislation. They support going forward with the arrangement.

Senator BENNETT. If we enact this legislation and the Bureau's budget is not increased and it is of the kind of priority that you have described on the part of Secretary Babbitt, what projects or activities that otherwise might have been funded would be eliminated? Have you earmarked those in terms of priorities?

Mr. BEARD. No, and I do not think that it makes one bit of difference on our budget. The Secretary has determined that he will go forward with the funding process, assuming that we continue down the road. We are in the process of preparing an environmental impact statement on how to take down these structures, what is involved, how long would it take, how much would it cost, what is the right way to do it.

Once we make that decision on how best to proceed, we will know the cost estimates in greater detail.

The Secretary has made it clear that we are going to implement this legislation, assuming that the Congress agrees, and so it does not really have an impact on my budget. That money has been allocated and whether it comes out of my budget or the Park Service budget, it is not like that money bumps something else out of my

budget. That money is already there. It is in the totals. Our budget office is running it out into the future.

We are assuming that it will be there and all the rest of us have to work around it.

Senator BENNETT. It bumps something out somewhere. That is the fact of life. But has the Secretary made that decision?

Mr. BEARD. Yes.

Senator BENNETT. For example, has he decided this is more important than the Everglades?

Mr. BEARD. No, he has not made that decision. The Everglades is important for him, too, and he plans to fund the Everglades initiatives. Pick something else.

Senator BENNETT. Okay. Anyway, all right, fine.

Senator CRAIG. Canyonlands, Canyonlands in Utah.

Senator BRADLEY. He says that is the most important, that is the top of his list of importance, that Canyonlands, Zion, and Brice are the three most important things.

Senator BENNETT. And I agree with him on that. I agree with him heavily.

[Laughter.]

Mr. BEARD. I would say to you, Senator, that the Central Utah Project Completion Act—

Senator BENNETT. Now you are getting very close, very close to the heart of the matter here.

Mr. BEARD. I knew that, and I would say to you that we have handled that problem as well as we have handled the Central Utah Project Completion Act. That is a priority. The Secretary has said we will stay on schedule and on target with that, and we have run those figures out, too.

Now, does that bounce something else from the budget? Yes, it probably does.

Senator BENNETT. Sure.

Mr. BEARD. But that is what budgets are all about. They are choices that you make in a policy parameter.

Senator BENNETT. Surely, and I understand that and that is what I am pursuing as to just exactly where on the Secretary's list this lies. And what I am hearing from you is that it lies very, very high.

Mr. BEARD. Just under the Central Utah Project.

Senator BENNETT. That is very, very high.

[Laughter.]

Senator BENNETT. Thank you, Mr. Chairman.

Senator BRADLEY. Thank you, Senator Bennett.

Senator Craig.

Senator CRAIG. Thank you, Mr. Chairman.

Dan, it is good to have you before the committee. You have just made some statements about the Secretary's priority on this project and I am looking at the act, seeing where the Secretary is to provide a report containing the findings, alternatives to dam removal, and certain specific information to the committee by January 30, 1994. I assume, therefore, that the Secretary has already found that the removal of the dams is the better direction, that the studies have been completed, and that he has drawn his conclusions from those studies as were required by the act. Is that not right?

Mr. BEARD. Yes, that is correct.

Senator CRAIG. So the report is now ready to submit?

Mr. BEARD. It has been submitted. I am sorry.

Senator CRAIG. June?

Mr. BEARD. Yes, June 22, 1994.

Senator CRAIG. I thought it was January 30 when it was due, and I have not seen it.

So we can judge by that that the \$250 to \$300 million figure you were talking about is for the complete restoration of the ecosystem. I think you said that the goal is full restoration of the Elwha River ecosystem.

Mr. BEARD. Yes. It includes all costs. What I was unclear about is it includes the cost to remove the structures and full restoration.

Senator CRAIG. And full restoration. Not having read the report, what was the finding as it relates to the sedimentation that might be behind that dam and how that will be handled?

Mr. BEARD. That is the basic problem that we have, and that is the reason that the the cost of the project varies so significantly, is how do you handle removal of the silt? You can either drain the reservoir and truck it away, which is very expensive and then you have a problem of where do you put it, or you can contain it, or you can use some other method.

We have a range of estimates and we are currently doing an environmental impact statement on the very issue of not only how do we decommission or take down the structures, which in and of itself is not a difficult engineering feat, but how do we handle the problem of the silt. And that is the most difficult issue.

Senator CRAIG. Because if you do not achieve some degree of stabilization in a relatively immediate sense and you have got an early spring runoff in the next spring from the removal, you could create phenomenal destruction in downstream potential fisheries.

Mr. BEARD. And water quality problems downstream.

Senator CRAIG. Absolutely. So with that in mind, you are still saying that the \$300 million is going to handle all of those issues? You have been able to quantify the sedimentation adequately enough that you will not have to come back to the Congress for greater sums?

Mr. BEARD. Yes, that is correct. Our estimate at the present time is \$300 million at the outside, and that includes everything.

Senator CRAIG. What is the hold-whole cost? And by that I mean, while Bonneville Power is picking this up, in essence the difference is being picked up by the taxpayers or the ratepayers of Bonneville. Do you know what those offsets are? Do we know what those costs generally are to supply the power?

Mr. BEARD. I do not have those available to me. I would be happy to provide it for the record, Senator. There is some differential, but I would have to provide that.

Mr. BEARD. Do you know, Mr. Winters?

Mr. WINTERS. The legislation requires that the user of the power, Daishowa America, will pay the same price as all other industrial users of the local provider, which is Port Angeles City Lights. So there is not any special deal in terms of cost offsets for the mill from the power provided by BPA.

Senator CRAIG. There is no differential in there?



Mr. WINTERS. No.

Senator CRAIG. All right.

My concern obviously goes to relicensing and the idea that one of the ways you consider relicensing of some of these hydro structures is simply to remove them, and I know that that is now an active part of relicensing consideration. We had someone before us discussing that this past week and the kind of impact that that can have long-term and how do we deal with issues like Elwha and, is it Glines? Glines is the other dam?

Mr. WINTERS. Glines.

Senator CRAIG. And of course you remember David Rauwer a couple of years was talking about the removal of Hetch Hetchi and the restoration of that system, that provoked a good deal of concern on the part of a lot of us. Obviously we are going to watch this one with a great deal of interest.

But I have one suggestion for the Secretary. I see he was quoted in April 1993 that he wanted to be standing in front of the dam and perhaps being the first Secretary to preside over, not building a dam, but blowing it up. Let me suggest that when he pushes the trigger, if he does not know any better than to stand in front of the dam, he ought to take advice from a Western Senator who he seldom takes advice from. He ought to stand on high ground somewhere near the dam, but not in front of the dam.

Mr. BEARD. I can assure you he will not be in front of it. I will pass on your message.

Senator CRAIG. I was hoping you would say it somewhat differently, Dan.

[Laughter.]

Senator BRADLEY. Senator, we can put that in report language.

[Laughter.]

Senator CRAIG. I know that on some of these Western issues the Secretary in my opinion has lost his way, but on this one I would like to offer him a limited amount of advice.

Thank you very much.

Mr. BEARD. Thank you.

Senator BRADLEY. Thank you.

I see that we have our colleague here, Senator Gorton. I have a few more questions to ask you, but I would like to extend the courtesy to him since he has been waiting and allow him to make his testimony, and then if you could come back.

Mr. BEARD. Certainly.

Senator BRADLEY. Senator Gorton, welcome to the subcommittee. It is a pleasure to have you.

#### STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

Senator GORTON. Thank you, Mr. Chairman and Senators Bennett and Craig, for allowing me to testify before the subcommittee today, particularly with such short notice.

When I joined you, Mr. Chairman, and the rest of the Washington delegation in sponsoring and passing the Elwha Restoration Act, I think we all agreed on one thing, that the struggle over the fate of the Elwha River dams was deadlocked at that point and could only be resolved by an act of Congress.

Beyond that point, there was and is a wide range of opinion on what is ultimately the best solution for the Elwha. Personally, I do not feel that dam removal is the most cost effective means of restoring salmon runs throughout the region. I think we can do as much for salmon with less money by pursuing other enhancement projects, while at the same time preserving jobs, the local water supply, a renewable energy source, and the Port Angeles economy.

But regardless of whether or not you accept this notion, I think we can all agree that the status quo is not acceptable.

Each year that goes by without the dams either being removed or relicensed is another year in which we do nothing for the Elwha salmon runs. Each year without action is another year in which the Port Angeles community cannot plan its economic future.

Congress and the administration simply must make a decision.

The Elwha River Restoration Act was designed to establish a framework in which that decision could be made. On reflection, Mr. Chairman, that legislation was seriously flawed. The Elwha Act does not offer a true choice among legitimate options and it threatens to leave the Elwha in the same deadlock that we have been trying to break.

If the administration and Congress do decide to appropriate funding for acquisition of the dams, the deadlock will indeed be broken.

But after observing this year's appropriations process, it is not at all clear that Congress will approve dam acquisition, much less removal, even if funds for the project are requested by the administration.

We have got to ask ourselves what if funding is not appropriated?

Most of us involved in passing the Elwha Act were under the impression that the dams would revert to their prior licensing status if money for dam acquisition was not appropriated within five years. The dams' owner, FERC, and everyone else would be thrown back into court to fend for themselves. This provision was to be an incentive for all parties to work towards securing appropriations for dam acquisition.

But on a closer reading of the act, it appears to me and others with whom I have consulted that failure to appropriate funding for dam acquisition would simply result in annual operating licenses for the dams ad infinitum.

Regardless of which interpretation is correct, Mr. Chairman, in the absence of dam acquisition it may be years, if not decades, before the Elwha debate is settled and we actually begin doing something constructive for the salmon. Though I do not believe dam removal is the best option, even that option is better than the status quo.

I therefore intend to introduce legislation to resolve the Elwha issue one way or the other.

The foundation of this bill will be a provision to improve Olympic Peninsula salmon runs. It authorizes \$25 million for implementation of a peninsula-wide salmon enhancement program in the event that the dams are not acquired by the Federal Government.

The bill gives the administration and Congress 2 more years to find the \$29.5 million necessary to acquire the dams in accordance with the original Elwha Act.

But if the dams are not acquired at the end of those 2 years, FERC would be directed to relicense the dams. As a condition of relicensing, the dams' owners would be required to install fish passage facilities and to fund other reasonable mitigation measures as required by FERC and the National Marine Fisheries Service.

Finally, the bill will include the text of legislation already introduced by the chairman and Senator Murray. That legislation, which is the subject of today's hearings, gives the administration broader authority over which agencies could fund dam acquisition and removal.

I am working with interested parties to develop this legislation further and hope to introduce a bill very soon. I believe it to be a responsible proposal that provides Congress and the administration with two salmon recovery options. The bill will force us to make a choice. It will force us to do something for the region's salmon runs and it will force us to resolve the Elwha issue so that the Port Angeles community can plan for the future.

My bill will not, Mr. Chairman, scuttle the process established in the Elwha Act. It is, rather, an attempt to put a time limit on that process and to provide a more cost effective alternative to dam removal.

So I look forward to working with the committee on the proposal, as well as the legislation introduced by Senator Murray. I thank the chairman and each of you for giving me this opportunity to testify.

Senator BRADLEY. Senator Gorton, thank you very much for your testimony and for your observations about the dam and the restoration of the salmon. I am anxious to see your legislation.

Senator GORTON. We will get it to you as quickly as we possibly can, Mr. Chairman.

Senator BRADLEY. Thank you very much.

Senator Bennett.

Senator BENNETT. Do I understand that you are recommending to the committee that we not pass the bill before us until we see your alternative? Or should we pass this bill and then address your alternative on the floor?

Senator GORTON. This proposal is not designed to slow down the deliberations of this committee, Senator Bennett. I think it is simply a matter of days, rather than weeks, before we have some legislation before you. But I am not presuming to advise this committee as to when and how to schedule its further action.

Senator BENNETT. Thank you.

Senator BRADLEY. So you would have no objection to us moving the bill that is before us now?

Senator GORTON. I do not have any such objection. I hope that before you even physically can do that you will have the alternative before you.

Senator BRADLEY. Thank you very much.

Could I have the Commissioner back.



Let me ask you, what will happen if Public Law 102-495 is not implemented, in other words the Elwha removal? What happens then?

Mr. BEARD. Not implemented in what way? If we do not purchase the facilities?

Senator BRADLEY. Yes.

Mr. BEARD. I do not know. I think the answer is that we laid out a process in that legislation. We are now implementing that process.

Senator BRADLEY. Will not the local parties be right back in court?

Mr. BEARD. Well, the local parties will be back in court and they will probably be back here, is where they will be.

Senator BRADLEY. And could you tell me which species could be on the endangered list?

Mr. BEARD. I would ask Mr. Winters to address that.

Mr. WINTERS. National Marine Fisheries Service has already received three petitions for stocks in the Elwha River, anadromous fish stocks. And in terms of what would happen, we perceive that we would be back to where we were before the 1992 Elwha Act passed, which is where none of us want to be, with this litigation.

Senator BRADLEY. So you would be back essentially with the court running things?

Mr. WINTERS. Right. We currently have the Federal court suit stayed pending implementation of the act.

Senator BRADLEY. The court itself could order removal of the dams?

Mr. WINTERS. That is the potential, yes.

Senator BRADLEY. Absent a law that implements the Elwha, the parties are back in court fighting about power loss and endangered species, and the Federal court says remove them, at which time who pays for that?

Mr. WINTERS. Potentially the dam owner, potentially the Federal Government. I would not presume to stipulate what the court would do. But the bottom line is that the restoration of the fisheries would not occur and we would have to deal with the Endangered Species Act.

The only way to restore the fisheries is to remove the dams.

Senator BRADLEY. Could you tell me once again, what alternative did you look at beyond dam removal? You had fish ladders, fish this, fish that. What other kind of things?

Mr. WINTERS. During the Federal Energy Regulatory Commission licensing process they developed a draft environmental impact statement. Section 5 of the Elwha report, consequences of alternatives, is largely a summary of that analysis FERC did based on input from the fish and wildlife agencies.

If the dams were to be licensed, the best that we could do would be to provide a ladder at Elwha dam, a trap and haul facility at Glines, which essentially is a short ladder, you put the fish in a truck, and then you truck them upstream. For downstream measures, it would be a screening facility at Glines and probably Eicher screens at Elwha, operational changes to pass more fish over spillways.

We could not overcome the problems of elevated water temperature, the trapping of sediments in the river, or the loss of fish in the reservoirs. But those were the types of alternatives we looked at.

Senator BRADLEY. The temperature differences are what?

Mr. WINTERS. About 2 to 4 degrees Centigrade.

Senator BRADLEY. And that is significant in terms of habitat for different varieties of fish?

Mr. WINTERS. What it does is it exacerbates fish diseases. What occurred in 1992, we did not have a study in place to identify it, but we lost two-thirds of the returning chinook salmon run in 1992 due to fish diseases, and we believe that the higher water temperature was a part of that.

Senator BRADLEY. So you are basically saying you have looked rather exhaustively in the last 2 years at alternatives to this removal and you have not found any alternatives that would achieve anything that would avert the possibility of a Federal court moving in on endangered species?

Mr. WINTERS. Correct. Actually we looked at it for a decade.

Senator BRADLEY. For a decade?

Mr. WINTERS. Yes.

Senator BRADLEY. Well, that is even longer than I have looked at it.

I thank you all for your testimony very much. Unfortunately we do not have Senator Gorton's bill before us to ask questions about or to get testimony from you on. But I appreciate you offering your testimony on the bill that is before us, and thank you very much for your views.

If we have any further questions on Elwha, we will submit them to the record in the next 24 hours.

On the last bill, S. 2266, I know that you do not have signoff from everybody in the administration. By that I assume you mean the Department of Justice.

Mr. BEARD. Good guess.

Senator BRADLEY. Is that correct.

Mr. BEARD. Yes.

Senator BRADLEY. Would the authority that you seek under this bill restrict the operations of local, State, or other Federal agencies in their law enforcement actions?

Mr. BEARD. Well, I think that I would rather, if I could, answer that in a sort of general fashion, because I think it is important for you and Senator Bennett both to be aware of what is going on, because it certainly was a surprise for me.

It seems that when we authorize these various projects and in our basic authorizing statutes for the Bureau of Reclamation we have been given the responsibility to implement various Federal legislation, but we have not been given the authority to do so. So that what has happened, as we built projects we turned them over for operation to local entities. We brought in State and local governments to provide law enforcement services and executed arrangements with them.

But those State and local governments do not have the authority to enforce Federal legislation, Federal laws. In addition to that, we seem to have developed a hodge-podge of arrangements with var-

ious local entities, counties, and State governments and State entities. It has gotten to the point where I think we have not approached this problem of law enforcement at Reclamation lands in a very professional manner.

We manage an area approximately the size of the State of Massachusetts and it appears, according to the Solicitor, that we do not have the proper legal authorities in place to provide law enforcement services. What that means is we have to rely on local government agencies to come out to our facilities when there is a problem. We have had a number of instances at—and I can provide those for the record—Lake Berryessa, California; American Falls in Idaho, and other places in Oregon, Montana, Arizona, and Nevada, where trouble develops between individuals. We have approximately 80 million visitors a year at our facilities and problems develop, particularly threats to life and property. The response time from local officials sometimes is very slow, taking an hour or more to get there in a threatening situation.

[The information referred to follows:]

1. Lake Berryessa, California, where there have been repeated injuries to visitors, threats to personnel, burglaries, and destruction of property. While we have a law enforcement agreement with the local county sheriff's department, coverage and response time are not always adequate to deter or deal with significant criminal violations. For instance:

—On July 16, 1989, rangers observed a man strangling a woman but because they lacked law enforcement authority, had been instructed not to intervene. The rangers, fearing a life-threatening situation, bluffed their authority and were able to ease the situation.

—On July 8, 1990, lifeguards were asked to intervene in a rape and assault incident of a woman and her son. Park rangers were notified and, while not having law enforcement authority, retained the suspects while waiting for the sheriff to arrive.

—On June 11, 1983, a lifeguard responding to a report of vandalism and fighting was threatened with a knife.

2. American Falls, Idaho, where there has been violations of the Archaeological Resources Protection Act.

It was necessary to enforce an off-road vehicle closure because significant cultural resources were being disturbed. Since local law enforcement officials did not want to get involved, the only solution was a convoluted process that required the U.S. Marshals Service to deputize National Park Service law enforcement officers for this specific enforcement action. Although the Park Service personnel handled the situation very professionally, and without incident, they were only there for a limited time so the illegal use will probably continue.

3. Scootney Park, Oregon, where the ranger was in jeopardy, and numerous violations of rules of conduct have occurred.

Our resident park ranger's authority to enforce the posted rules was challenged by park users, and the ranger felt that he and his family were being threatened. Increased gang activity contributed to his fear. Response time for a sheriff is one hour or more, clearly unacceptable to provide the needed protection and enforcement. The ranger transferred out last May.

4. Haystack, Oregon, where there has been an increase in observed illegal drug activity.

The U.S. Forest Service had been doing Reclamation a favor by patrolling adjacent Reclamation lands, and when users found they had no jurisdiction the Forest Service had to back off. They took down their regulation signs and do not make contact with anyone on Reclamation lands. There have been drugs and weapons observed at the site and there are individuals living out of cars. The Oregon State Police have been contacted, but the area is not routinely patrolled.

5. Canyon Jerry, Montana, where personnel have been placed in jeopardy, trespass occurs on a regular basis, illegal dumping of hazardous materials has been discovered, and violations of rules of conduct have occurred.

Although Reclamation has law enforcement contracts with county sheriff's departments in the area, they are only enforcing crimes against persons and not violations of rules of conduct, trespass and hazardous waste dumping. People who were intoxicated have harassed our campground host and his wife. Cabin owners on adjacent



private land cut the boundary fence to gain private access to the reservoir. Individuals have dumped hazardous waste (oil) on Federal land adjacent to the reservoir.

6. Davis Dam, Lower Colorado River, Arizona and Nevada, where there has been an increase in illegal activities ranging from vandalism and theft to threats against Reclamation employees. Local law enforcement agencies have their hands full dealing with their own jurisdictions and normally are unable to respond in a timely manner to problems at this facility. The area, including land along the Colorado River under Reclamation's jurisdiction, has gained a reputation as a "no man's zone" with regard to law enforcement.

Mr. BEARD. We do not have personnel that are properly trained, nor do they have the authority to arrest individuals who are committing crimes, even when they see them committing a crime. So what we have, I think, is a situation which is a threat to the public and to our employees.

The reason I think your legislation is so important is that it will provide a basis on which we can approach this problem in a very businesslike and professional manner, so that we will get this problem straightened out once and for all.

We currently have recreation, about 3½ million visitor days, I think, at 600,000 acres of reclamation land, where we have no arrangements in place for law enforcement services. That means that individuals are out there and if they commit a crime there is nobody out there to enforce the law.

That is a big problem. It is a big problem in terms of drug activity and also criminal activity as well. And I am very fearful that something is going to happen out there unless we get this legislation, or something like this to straighten the problem out.

So we intend to work with the Justice Department, OMB, and other agencies in the executive branch to make sure that we submit a report which is helpful to the committee so that we can get this problem resolved.

Senator BRADLEY. Thank you very much. I think that it appears to be a serious problem on these matters. I am certainly going to listen to people who are providing the local police service in the States that are involved. I assume that they—

Senator BENNETT. Does that mean that you are going to support PILT?

Senator BRADLEY. That means I am going to listen to you. I might even do that some day.

Senator BENNETT. If I could just make one quick comment, Mr. Chairman. Before you leave, Mr. Commissioner, I understand you have been in touch with the minority staff over the issue of subsection (g) being overbroad and we appreciate your willingness to meet with staff on that and just hope you continue to address that issue.

Mr. BEARD. Happy to do it.

Senator BENNETT. Thank you.

Senator BRADLEY. Thank you very much, Commissioner.

Mr. BEARD. Thank you.

Senator BRADLEY. And assistants X and Y, thank you very much.

Our last panel is Mr. Thomas Archer, manager, Mountain Park Master Conservancy District, Mountain Park, Oklahoma. Welcome to the subcommittee, Mr. Archer. Please take your seat. You are accompanied by your counsel Mr. Dan McMahan?

Mr. ARCHER. Yes, sir.

**STATEMENT OF THOMAS R. ARCHER, MANAGER, MOUNTAIN PARK MASTER CONSERVANCY DISTRICT, ACCOMPANIED BY DANIEL E. McMAHAN, COUNSEL**

Mr. ARCHER. Mr. Chairman, thank you. My name is Thomas Archer and I am the manager of the Mountain Park Master Conservancy District. I want to express my appreciation on behalf of myself and of course all the citizens of the cities of Altus, Frederick, and Snyder, Oklahoma, for this opportunity to discuss the legislation before you.

We are here today to support Senator Nickles' and Senator Boren's proposed legislation requesting that the Mountain Park Master Conservancy District be allowed to prepay the municipal and industrial water supply costs associated with the Mountain Park Reclamation Project on a basis that is fair to both the United States and the district and one which preserves the financial integrity of the district and its member cities.

At the outset, let me point out that the district's request is being made at a crucial time, as the city of Frederick is seriously considering whether it is in the best interest of the City to make their payment to the district which is due September 1 of this year. If Frederick decides not to make this payment, then the district will not have the funds to meet its annual installment to the United States that is due on October 1.

It has been suggested by Frederick City leaders that the decision as to whether to make the September 1 payment will be determined in large part by the action taken during this Congress in addressing the district's problems.

We have prepared and would ask to have included in the transcript of this hearing a statement that goes into considerably more detail about these problems. But let me briefly summarize these problems if I might.

The primary purpose of this project is to provide a municipal water supply for the residents of Altus, Frederick, and Snyder. However, the project was designed and built to meet the water needs of a district population in excess of 80,000 people. As it turns out, none of the three cities have ever come close to the rate of growth that was projected during the project's planning stage. In fact, each of the three cities have actually lost population in the years since construction began on the project.

Currently the population base district-wide is only about 40 percent of what it was predicted to be in 1995. More importantly, water demand in the district is only 28 percent of the projected level of usage. So not only has the district not met the level of growth upon which city repayment obligations were predicted; the three cities have actually experienced substantial declines in their populations and their usage of project water.

A much greater problem for the district, however, is the fact that project costs have increased over 200 percent over the estimates made in the Bureau of Reclamation's 1971 definite plan report. These construction costs must now be borne by a shrinking customer base in each of the three cities. Twenty-eight percent of the estimated water usage must now generate the funds required to pay 200 percent of the estimated project cost.

The district has been especially impacted by the decision to construct the Bretch diversion dam and canal. The construction was originally planned to be deferred until the water usage of the member cities increased to a level which would justify these facilities. It was then determined in 1971 that these diversion facilities would be needed within a very short period of time.

In hindsight, it is clear that the water requirements of Altus and Snyder could have been met without these expensive diversion features. Since approximately one out of every three dollars owed by the cities on this project is associated with the construction of the Bretch diversion dam and canal, this decision to construct these diversion facilities has proven to be a very costly one for the district and its member cities.

These two factors, declining population and a doubling in the project cost, have created a very substantial hardship on the residents of these three cities. For example, even though the city of Frederick doubled its water rates last summer, that city will still not be able to meet its payments to the district within a few years. In fact, Frederick would have to charge more than five times the average monthly charge for residential water in Oklahoma to generate the necessary revenues, and that assumes that there would be no reduction in consumption due to the large increases.

Mr. Chairman, the story is much the same with the cities of Altus and Snyder. In fact, the Bureau's financial adviser, First Chicago, has made an investigation into the ability of these three cities to meet the increasing debt service amounts. First Chicago concluded that: "The escalating debt burden imposed on the district and authorities will make it difficult for the district to retire its obligation to the Bureau beginning in 1995, if not sooner."

Clearly, our analysis shows the ability to pay of each entity is compromised. The willingness of the cities to repay their obligations was in evidence in our meetings. However, without the ability to restructure the obligation to relieve the debt service burden, default is inevitable.

Based on these facts, Mr. Chairman, we think that the district has proposed a very fair and equitable solution for all parties. This legislation would authorize the Secretary of the Interior to accept a payment equal to the fair market value of the district's obligation as full payment for the district's municipal and industrial water supply obligation.

We believe, as does the Bureau's financial adviser, that the earlier legislation adopted as part of Public Law 102-575 imposes restrictions which prevent the Secretary of the Interior from accepting a fair market value prepayment. This current legislation will correct that problem.

In addition, the district is seeking permission to negotiate with the Secretary of the Interior for the reallocation of some of the water that is currently going unused by the three cities. The district believes that significant environmental benefits could be realized by such reallocation. Not only will such reallocation help in reducing the district's financial burdens, it will also ensure that the district is not divested of water rights on Otter and Elk Creeks due to lack of use.



I would refer the chairman again to our statement for more information on the issues that I have just touched on here today.

In closing, let me again impress the urgency of this proposed legislation and also to express our thanks to the chairman and the members of this subcommittee for allowing us the time today, and we would very much appreciate your consideration of Senator Nickles' and Senator Boren's proposal during this session of Congress.

Thank you.

[The prepared statement of Mr. Archer follows:]

STATEMENT OF THE MOUNTAIN PARK MASTER  
CONSERVANCY DISTRICT REGARDING S. 2253

The Mountain Park Master Conservancy District (the "District") is supporting legislation (S. 2253), introduced by Senator Nickles and Senator Boren, which would authorize a reallocation of certain construction costs associated with the Mountain Park reclamation project (the "Project"), and which would allow the District to prepay that portion of the District's repayment obligation which is associated with the Project's municipal and industrial water supply features.

Congress authorized the construction of the Project on September 21, 1968, in P.L. 90-503. The primary purpose of the Project is to provide a municipal and industrial water supply for the cities of Altus, Snyder and Frederick, Oklahoma; however, the Project also is designed to provide flood control, fish and wildlife conservation and recreational benefits. Project features include the Tom Steed Reservoir (formed by the Mountain Park Dam and related dikes), pipelines and pumping facilities, recreational facilities, and the Bretch diversion dam and canal. The Bretch diversion dam and canal were constructed to augment the water supply in the Otter Creek basin by diverting water from Elk Creek into the Tom Steed Reservoir.

The District is responsible for the daily operation and maintenance of the water supply distribution system, pursuant to the terms of Contract No. 14-06-500-1794, dated January 27, 1971, by and between the United States and the District (the "Repayment Contract"). This Repayment Contract also provided that the District will reimburse the United States for the project costs allocable to the municipal and industrial water supply features, and a portion of the costs allocable to recreation and fish and wildlife conservation, plus interest on such costs at 3.50% per annum. Contemporaneously therewith, the cities of Altus, Frederick and Snyder entered into separate contracts with the District which called for each city to bear a portion of the municipal and industrial water supply costs, which contracts provided that each of the three cities will pay annually to the District an amount which when combined with the payments from the other cities, would equal the District's payment to the United States.<sup>1</sup>

During the 102nd Congress, the District and its member cities sought permission from the Federal government to prepay the District's municipal and industrial water repayment obligation at a price equal to the fair market value of such obligation. This

---

<sup>1</sup> These payments reflected each city's proportionate share of the water supply rights in the reservoir, i.e. Altus - 70.13%, Frederick - 24.54%, and Snyder - 5.33%, times the joint costs of the reservoir, Bretch diversion dam and canal and main aqueduct, plus the costs associated with their individual distribution lines.

prepayment option is one that has been extended to many other entities by the United States in recent years. The District's proposal, originally introduced as S.1618, was incorporated into the Reclamation Projects Authorization and Adjustment Act of 1992, and enacted as Title 31 of P.L. 102-575.

Unfortunately, during the legislative process, substantive changes were made to the District's original proposal which greatly limited the discretion which the Secretary of the Interior could exercise in accepting a prepayment from the District. Because of language in P.L. 102-575, the Secretary of the Interior could not value the District's repayment obligation using a discount factor greater than "a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities." Moreover, because this legislation prohibited the Secretary from basing the interest rate or discount factor on third party and open market factors, a market value for the obligation could not be established.

The District believes that P.L. 102-575 would have provided only marginal relief had a prepayment been made which conformed to these restrictions. In fact, such would have actually increased the debt service payments for the cities of Snyder and Frederick. Debt service for the City of Altus would have also been greater through the year 2011. In addition, the United States would have received a windfall from any prepayment which complied with the requirements of such legislation.

Because of these and other problems inherent in the language contained in P.L. 102-575, the District was denied the relief which they sought in S.1618. Therefore, part of the District's latest proposal should be considered as being corrective in nature so as to allow the District to prepay its repayment obligation based upon the fair market value of its obligation.

In addition, the District is also requesting that a portion of the water yielded from the Project be authorized to be used for environmental quality purposes, and that a proportionate share of the municipal and industrial water supply costs be similarly reallocated. This would also help to alleviate the financial problems associated with Project, while providing important environmental benefits to this area. And, as is discussed below, unless additional beneficial uses can be found for some of the District's unused water, the District and the Federal government could be divested of valuable water rights on Otter Creek and Elk Creek through Oklahoma's appropriation statutes. Again, this aspect of the District's proposal was not part of the proposal submitted during the 102nd Congress, and, thus, is before Congress for the first time.

---

<sup>2</sup> Section 3101(f), P.L. 102-575.

The testimony of Mayor Leo Fallon of Frederick was heard by this committee during the 102nd Congress concerning that city's financial plight. While such problems still plague that city, and, indeed, have grown worse since 1992, Altus and Snyder have experienced financial difficulties as well due to the Project's onerous debt service requirements. Frederick remains the city most likely to default first on its share of the District's repayment obligation, perhaps due to the fact that, for the foreseeable future, Frederick will use none of its allocation of water from the Project. But, all three cities have suffered from the same two basic problems, severe declines in population and customer bases, and greatly inflated Project costs.

#### District Population.

As originally envisioned, the Project was designed to serve increasing populations within the three cities. In the Project Feasibility Report prepared by the Bureau of Reclamation in the early 1960's, it was predicted that each city was going to experience prodigious population growth. Based upon these population projections, estimates of water demand for each of the cities were prepared. The Bureau's projections for population and water demand are summarized below:

	1965	1975	1985	1995	2005	2015
<u>Altus</u>						
Pop.	30,500	41,000	49,000	54,500	58,500	61,000
Water Req. (mgd)	5.124	7.462	9.454	11.064	12.402	13.420
<u>Frederick</u>						
Pop.	7,740	8,900	10,240	11,780	13,550	15,580
Water Req. (mgd)	1.129	1.478	1.907	2.361	2.809	3.349
<u>Snyder</u>						
Pop.	2,200	2,600	3,000	3,400	3,800	4,200
Water Req. (mgd)	0.293	0.384	0.475	0.572	0.668	0.761

Based upon these estimates, the reservoir and diversion facilities were designed to yield a total of 14.26 mgd (15,970 acre-ft), which yield was allocated among the three cities, as follows:



	Altus	Frederick	Snyder	Total
MGD	10.00'	3.50	0.76	14.26
Ann. Acre-ft	11,200	3,920	850	15,970
% of Yield	70.13%	24.54%	5.33%	100%

However, for a variety of reasons, population growth has been non-existent in the years since these projections were first adopted. In fact, during the 1980's, the population of the District substantially decreased:

	Altus	Frederick	Snyder	District
1980 Pop.	23,101	6,153	1,848	31,102
1990 Pop.	21,910	5,221	1,619	28,750
% Decrease	-5.2%	-15.1%	-12.4%	-7.6%

As can be seen from a comparison of the 1960's population estimate for 1995 with the latest estimates of actual population made in March, 1994, the population projections contained in the 1964 Feasibility Report have proven to be wildly optimistic:

	Altus	Frederick	Snyder	District
1964 Est.	54,500	11,780	3,400	69,680
1994 Est.	21,630	5,104	1,618	28,352
% Difference	39.68%	43.32%	47.58%	40.69%

The actual water demands of each community have also fallen well short of that which was estimated in the Bureau's 1964 Feasibility Report:

	Altus	Frederick	Snyder	District
1964 Est. (mgd)	11.064	2.361	0.573	13.997
1993 Avg. (mgd)	3.497	0.600	0.450	3.947
% Difference	31.16%	0.00%	78.87%	28.20%

#### Project Costs.

As to Project costs, the following table summarizes the growth in the reimbursable costs associated with the Project's municipal and industrial water supply purposes:

---

The City of Altus water requirements were projected to be met in part from water deliveries from the Lake Altus Project and from well fields in Texas.

	<u>Construction Costs</u>	<u>Construction Interest (IOC)</u>	<u>Total</u>
Bureau of Reclamation Feasibility Report, 1964 Revision'	\$13,412,000	\$ 643,000	\$14,055,000
Definite Plan Report 1971 Revision	\$18,389,000	\$1,328,000	\$19,717,000
Final Cost Allocation January 1993	\$35,510,000	\$3,952,000	\$39,462,000

As can be seen from this table, the costs of the Project have shot up 280% over the costs initially estimated by the Bureau of Reclamation in 1964, and have increased 200% over the estimates in the Definite Plan Report.

The District's financial burden has further increased due to the Repayment Contract's negative amortization of interest charges during the first sixteen years of the District's repayment schedule. Initially, the United States and the District structured the District's municipal and industrial water supply costs repayment schedule based upon the above-mentioned water demand projections. Consequently, the District's annual installments (and, likewise, each city's) were to increase each year at roughly the same rate as each city's customer base. This schedule of increasing payments, however, has had the effect of annually converting unpaid interest charges into principal. This trend has been made worse by the unexpectedly large project costs noted above. As a result, the District's now owes \$43,357,311.00 (including interest accrued to October 1, 1994) on its municipal and industrial water supply obligation. The District is not scheduled to start fully paying the annual interest charges on its repayment obligation until October 1, 1996, at which time the total municipal and industrial water supply obligation will have grown to \$45,606,930.00.

With many Federal water projects, cost increases such as those described above are unavoidable. However, such is not true in this case, as the costs associated with the construction of the Bretch diversion dam and canal could have been avoided or at least deferred for several years. In fact, this is what the Bureau of Reclamation initially proposed, as the Bureau's Plan of Development for the Project provided that construction was to occur in two stages. In Stage 1, the dam and storage reservoir, pipelines and pumping facilities, and recreational facilities were to be completed. Thereafter, Stage 2 called for the following:

---

\* House Document No. 483, 89th Congress, 2d Session.

"Construction of the Bretch diversion dam on Elk Creek and the Bretch diversion canal into Otter Creek above Mountain Park Reservoir. The stage 2 construction would be undertaken when the project water requirements of [the cities] have increased to such extent as to approach the yield of the Mountain Park Reservoir without diversion of Elk Creek flows. On the basis of forecast demands and available streamflow records, it appears that stage 2 construction could be deferred for about 10 years."

Though Congress did include authorization for the Bretch diversion facilities as part of P.L. 503, the Bureau of Reclamation's Feasibility Report clearly contemplated that these facilities would only be constructed when needed.

However, by the time that the Definite Plan Report was prepared, the Bureau of Reclamation had revised its Plan of Development due to its finding that "revised water supply studies made for this report show that the flows of Otter Creek alone will not meet Altus and Snyder demands for the initial 10-year period."

Unfortunately, the Bureau's revised findings proved to be incorrect, as the records of the District indicate that, from 1980 to 1993, over three times more water has been released during flood control operations at the Mountain Park Dam than has been diverted into the Tom Steed Reservoir by the Bretch diversion facilities. In fact, more water has been released than diverted in every year since 1980, with the exception of 1989, when 5,700 acre-feet of water was diverted from Elk Creek and no flood control releases were made. However, during 1989, the reservoir conservation pool never dropped below 60% of capacity, meaning that even in that year, Elk Creek flows were not needed for water deliveries to Altus and Snyder. (During this period, the City of Frederick did not use any of its allocation from the Project, and to date, has yet to do so.)

The cost of constructing the Bretch diversion dam and canal has been substantial. As indicated in the Bureau of Reclamation's Final Cost Allocation Report, construction costs of the Bretch diversion dam were \$3,646,675.00, and \$7,991,000.00 for the Bretch diversion canal, for a total of \$11,638,000.00. This represents 32.4% of the reimbursable costs allocated to municipal and industrial water supply purposes. If a pro-rata share of the interest during construction (IDC) and post-construction interest

---

\* "Plan of Development For Mountain Park Project, Oklahoma", at page 17, House Document No. 483, 89th Congress, 2d Session (Emphasis added.)

" Bureau of Reclamation, Mountain Park Project - Oklahoma Definite Plan Report, at page 6.

accruals are included (the sum of these amounts being \$2,542,528'), the total costs associated with the Bretch diversion dam and canal are \$14,180,528. In short, these three cities are being charged over fourteen million dollars (plus the annual operation, maintenance and replacement costs) for a source of supply that none of the three cities need or can put to use at this time. This is due solely to the decision in 1971 to build the Bretch diversion facilities at the outset of the Project, rather than waiting until a clear need was demonstrated, as was first proposed in the 1964 Feasibility Report.

#### Effect on Member Cities.

This very large sum of \$43,357,311.00 must now be repaid by the District over the next 36 years. To do so, the annual payments owed by each city are now well in excess of each city's ability to make.

At the time the Repayment Contract was first signed, the District's payments were scheduled to be \$234,127 for 1980, increasing each year thereafter to a maximum of \$1,392,926 in 2029. Likewise, each city was to have a corresponding payment to the District which would increase through the years as each city's population (and, presumably, water demand) also increased. Minimum and maximum payments for each city were initially scheduled to be as follows:

	Altus	Frederick	Snyder
Minimum	\$200,527	\$ 11,127	\$20,539
Maximum	\$968,018	\$359,671	\$63,292

Based upon these large increases in construction costs, and the related increases in accrued but unpaid annual interest charges, the District must now attempt to make much higher debt service payments to the United States, from \$1,309,640 in 1994 to a maximum payment of \$2,755,021 in 2028. Each city's share of such payment has also increased proportionately. The following summarizes the maximum payments which each city must now meet as compared with the original number:

	Altus	Frederick	Snyder
Original	\$ 968,018	\$359,671	\$ 63,292
Current	\$1,782,168	\$859,231	\$113,622

To meet these payments, each city has imposed dramatic increases in recent years in their municipal water charges. For example, prior to July 1, 1993, Frederick charged its customers \$12.50 for 2,000 gallons of water. Today, Frederick charges \$25.00 for 2,000 gallons. To meet its share of the District's maximum

---

' \$3,952,000 (IDC) plus \$3,895,311 (post-construction interest accruals) times .324 = \$2,542,528



annual installment, Frederick would have to charge \$60.00 for the same quantity of water. For 5,000 gallons, Frederick would have to charge \$72.00, as compared with the current charge of \$30.25. This compares with an average water bill in Oklahoma of \$14.07 for 5,000 gallons. For 10,000 gallons of water, Frederick would have to raise its current charges of \$39.00 to \$92.00. This would compare to \$23.90 for the average water customer in Oklahoma. For large users, Frederick would have to increase its rates from \$57.50 to \$133.00. Obviously, such rates would constitute a significant disincentive for attracting new industrial users to Frederick. Therefore, residential users would almost certainly bear the brunt of Frederick's repayment obligation.

Of course, these rates assume that consumption would not decrease as a result of the much higher rates. However, such an assumption is not realistic. Rates such as these would almost inevitably drive down the demand for water, which, in turn, would make it necessary to increase rates further, thus, driving down consumption again. In reality, it is very unlikely that Frederick could ever raise its water rates enough to meet its payment to the District. When one considers that Frederick does not anticipate needing Project water for at least another twenty years, it is indeed difficult to imagine the citizens of that community (or any other) paying such high rates over a long period of time for water they do not need.

#### P.L. 102-575.

It is this situation, and similar ones in Altus and Snyder, that has led the District to explore options which would reduce the financial burdens associated with the Project. During the 102nd Congress, the District attempted to have legislation enacted which would have allowed the District to prepay its municipal and industrial water supply obligation under the Repayment Contract, by paying an amount equal to the fair market value of the obligation. As noted above, as enacted, P.L. 102-575 authorized the Secretary of the Interior to accept such a payment, but fixed the interest rate to be used in calculating the prepayment to an amount not in excess of "a composite interest rate consisting of the market yield on Treasury securities of comparable maturities", and specifically provided that the interest rate should not "equate an appropriate amount of the prepayment with the price of the loan if it were to be sold on the open market to a third party". In other words, the prepayment amount is to reflect a credit rating for the District equal to that of the Federal government, an assumption clearly not in accord with the circumstances at hand.

As directed in P.L. 102-575, the Secretary of the Interior, with the assistance of First National Bank of Chicago, as financial advisor to the Bureau of Reclamation, has made "appropriate investigations" regarding the financial condition of each city, and the ability of each city to continue to pay the

higher municipal and industrial water supply costs. In First Chicago's report to the Bureau, it concluded that the ability of each city to pay these increasing debt service payments is being compromised by these tremendous debt service levels, and that default by each city on their water supply obligations is "inevitable", due primarily to the cities' declining populations and tax bases.

The District believes that there are several problems inherent in this approach. First, though it appears that this language was designed to ensure that the United States is made whole during such transaction, a prepayment made in conformity with P.L. 102-575 would actually result in a windfall for the Federal government, at the expense of the District and its member cities, due to three factors:

(i) the fact that one or more cities will inevitably default on its share of the District's repayment obligation means that the United States will, at some point in time, realize a loss on its investment in this Project. In other words, P.L. 102-575 inherently fails to consider that, unless some relief is provided, the District's actual payments may, over time, aggregate less than the fair market value of the District's obligation today;

(ii) the use of a composite rate rather than the normally higher 30-year constant would mean that if the prepayment amount were applied to reduce future long-term borrowing, the United States would realize more in interest savings than it would lose in annual District payments; and

(iii) the approach employed by the Office of Management and Budget in calculating taxes "foregone" due to the District's use of tax-exempt bonds in financing a portion of its prepayment amount, assumes that the dollar amount of outstanding tax-exempt instruments would increase dollar for dollar with the bonds or notes issued by the District. Such an assumption presumes an unlimited demand for tax-exempt investments, and is not in accordance with the experience of small issuers of non-investment grade tax-exempt credits.

#### S. 2253.

As previously noted, the District would not achieve any significant debt service savings by prepaying according to P.L. 102-575. However, to avoid the considerable problems associated with the District's default under the Repayment Contract, the District has developed the proposed legislation now before Congress. This legislation will allow the individual cities to refinance their obligations to the District on a basis which is consistent with each city's ability to pay, and consistent with recent Federal precedents. This legislation contains two separate proposals.

First, the District's proposal authorizes the Secretary of the Interior to allocate a portion of the reimbursable municipal and industrial water supply costs to nonreimbursable environmental purposes. The legislation authorizes the Bureau to acquire and use a portion of the District's water rights for such environmental purposes as downstream releases, pool fluctuation and wetlands development. Any or all of the three cities may decide to relinquish a portion of its project rights in order to free up the reservoir yield required for such environmental uses. However, at this time, it is expected that Frederick could most easily give up a portion of its Project allocation.

Second, the District's proposal authorizes the Secretary of the Interior to accept a payment equal to the fair market value of the District's municipal and industrial water supply obligation. This fair market value would be determined using a discount rate which reflects the greater risk associated with the District's obligation, based upon the underlying credit rating of each of the cities. In effect, the District is merely asking that it be allowed to repurchase its obligation from the United States at the same price that the United States could sell such obligation to a third party. As noted, this type of transaction has been approved in the past by Congress and has been used on numerous occasions by various agencies of the Federal government.

In its report to the Bureau, First Chicago also detailed the process by which the fair market value of this obligation should be determined in accordance with the requirements of Circular A-129 promulgated by the Office of Management and Budget. The District has recently updated these fair market values of each city's water supply obligations, in accordance with the methodology employed by First Chicago in its report. The District's estimates are, as follows:

	Fair Market Value
Altus	\$12,362,721
Frederick	6,314,785
Snyder	766,019
	-----
District	\$19,443,525

The District believes that the redemption of its municipal and industrial water supply obligation for an amount equal to the fair market value of its obligation would relieve the cities of the financial burdens they now face and would result in a higher payment to the United States than would otherwise be the case, given the probability of a default in this case. Accordingly, the District would respectfully urge passage of S. 2253.

Senator BRADLEY. Thank you very much, Mr. Archer.

Do you expect that any of the three cities are going to take advantage of the opportunity to prepay?

Mr. ARCHER. Yes, sir, I do.

Senator BRADLEY. All of them?

Mr. ARCHER. I would say that probably all three of them would take advantage.

Senator BRADLEY. All three.

I can only tell you I think this is an ingenious solution to this problem. I think it will probably enhance the quality of life for those that remain as well as provide water for people and keep the whole district from going bankrupt. I think the environmental set-aside is a very creative way to deal with this. It recognizes the resource.

I have no further questions.

Senator Bennett.

Senator BENNETT. I have no questions.

Senator BRADLEY. Mr. Archer, you have just participated in the easiest testimony before a Congressional committee in the years that I have been the chairman of this subcommittee. I think you did not need your counsel, but I hope he will take you to dinner tonight.

[Laughter.]

Senator BRADLEY. The subcommittee is adjourned.

[Whereupon, at 3:17 p.m., the hearing was adjourned.]

○





ISBN 0-16-046648-2

